there was no such sub-tenancy, this appeal must fail. Accordingly, I would uphold the decision of the High Court and the sessions court, but on the different grounds given in this judgment, and dismiss this appeal with costs.

Appeal dismissed.

Solicitors: *Yeap & Yeap; N. Sharma.*

ANG BENG LEE v. GOVERNMENT OF MALAYSIA

[F.C. (Thomson L.P., Barakbah C.J. (Malaya) and Tan Ah Tah F.J.) March 22, 1965]

[Ipoh — Federal Court Civil Appeal No. 87 of 1964]

Practice and Procedure — Defence — Application to strike out — R.S.C. 1957, O. 25 r. 4.

The appellant a building contractor brought a claim against the Government of Malaysia in respect of some work done in connection with schools. The defence was that the work was done, if at all, in accordance with the provisions of a written contract, containing an arbitration clause. The appellant contended that the work was done otherwise than in accordance with the written contract and that he was entitled to claim on a *quantum meruit* and therefore that the defence on the written contract was wrong in common law. He accordingly applied that the defence should be struck out under Order 25, rule 4 of the Rules of the Supreme Court. The application was dismissed and the appellant appealed.

Held: in all the circumstances this was not a suitable case for the application of Order 25 rule 4 and it would be wrong for the court to interfere with the judge's exercise of his discretion in this case.

Cases referred to:—

(1) *Attorney-General of the Duchy of Lancaster* v. *London and North Western Railway Co.* [1892] 3 Ch. 274.

(2) *Waters* v. *Sunday Pictorial Newspapers Ltd.* [1961] 2 All E.R. 758, 763.

FEDERAL COURT.

N. H. Chan for the appellant.

Au Ah Wah (Treasury Solicitor) for the respondent.

Thomson L.P. (delivering oral judgment): This is an appeal from a decision of Ali Hassan J. whereby he dismissed an application made under Order 25 rule 4 to strike out a defence as pleaded.

The substantive proceedings were by a building contractor against the Government of Malaysia in respect of some work done in connection with schools.

Putting the cart before the horse, the defence case (the Government's case) is that this work, if it was done at all, was done in accordance with the provisions of a written contract containing an arbitration clause.

The plaintiff's case is that the work was done otherwise than in accordance with this written contract and accordingly he is entitled to sue on a *quantum meruit* and that a defence based on the written contract is wrong in common law and cannot succeed. He accordingly applied that it should be struck out under Order 25 rule 4.

The question in issue, that is as to the striking out, is not to be considered in the abstract but in regard to the actual framework of the action. And it is clear that part of that framework is a bundle of contract documents running, by the look of it, to well over a hundred pages of typewriting and plans and which at first glance are unlikely to be easy of construction and interpretation. It is, I think, common ground that the action turns ultimately on the construction and interpretation of that mass of contract documents.

That, in our view, is a task primarily for a judge sitting in court. His conclusions, when they are arrived at, can be brought here and examined but in the first placce they must be arrived at after suitable and mature consideration by a judge.

In all the circumstances we do not consider that this is a suitable case for the application of Order 25 rule 4.

The defence as pleaded may be well founded. It may not be well founded. It would be wrong for us to express any opinion on that point at this stage. But we are certainly unable to say that it can by any stretch of the English language be described as frivolous.

Dealing with this rule in the case of *Attorney-General of the Duchy of Lancaster* v. *London and North Western Railway Co.*(1) Lord Lindley quoted with approval the following observations of the Vice-Chancellor of the County Palatine of Lancaster (at p. 276):—

> "The questions raised upon this application are of such importance and such difficulty that I cannot say that this pleading discloses no reasonable cause of action, or that there is anything frivolous or vexatious; therefore, I should let the parties plead in the usual way."

Then Lord Lindley went on:—

> "It appears to me that this is perfectly right. To what extent is the court to go on inquiring into difficult questions of fact or law in the exercise of the power which is given to it under Order XXV., rule 4? It appears to me that the object of the rule is to stop cases which ought not to be launched — cases which are obviously frivolous or vexatious, or obviously unsustainable."

These words, of course, relate to the application of the rule to a statement of claim but in our view they apply equally to its application to a statement of defence.

That was said in the year 1892. In the year 1961, about 70 years later, much the same thing was said by Danckwerts L.J. in the case of *Waters* v. *Sunday Pictorial Newspapers, Ltd.*:—(2)

> "R.S.C. Ord. 19, r. 27, and Ord. 25, r. 4, and, indeed,

also the inherent jurisdiction of the court, are only to be exercised in cases where it is clear that the defences which have been put forward cannot really succeed, so that it may be proper to strike them out at such an early stage in the action. Unless that is reasonably plain, it is a jurisdiction which in practice is not exercised, and it is a jurisdiction which is exercised only with the greatest care."

Illuminating our minds with the light of these passages we are of the opinion that it would be wrong for this court to interfere with the judge's exercise of his discretion in the present case.

The appeal is dismissed with costs.

Barakbah C.J. (Malaya) and **Tan Ah Tah F.J.** concurred.

Appeal dismissed.

Solicitors: *Cheang Lee & Ong.*

PUBLIC PROSECUTOR v. YEOH JOO HONG

[A.Cr.J. (Hepworth J.) March 31, 1965]

[Penang — Criminal Appeal No. 5 of 1965]

Infants and children — Suffering a child to take part in public entertainment — Meaning of "suffer" — Proof of mens rea — Unnecessary to prove actual knowledge — Children and Young Persons Ordinance, 1947, ss. 10(1), (3) and 11.

Theatres and Places of Public Amusement — Entertainment by infants and children — Suffering a child to take part in public entertainment.

The respondent was charged that he being the licensee of a singing troupe did suffer a child under the age of 12 years and a child under the age of 17 years to take part in a public entertainment in contravention of section 10(1) and section 10(3) respectively of the Children and Young Persons Ordinance. He was acquitted on the ground that the prosecution had failed to prove *mens rea*. The Public Prosecutor appealed.

Held: (1) it was unnecessary to prove actual knowledge that the children had taken part in the public entertainment; it was sufficient if such knowledge could be inferred from the facts that have been proved;

(2) in this case such an inference could be drawn from the facts and therefore the case should be remitted to the magistrates' court for the respondent to be called upon for his defence.

Cases referred to:—

(1) *Public Prosecutor* v. *Lim Teik Heng* [1962] M.L.J. 364.

(2) *Redgate* v. *Haynes* (1875-76) 1 Q.B.D. 89.

(3) *Bosley* v. *Davies* (1875-76) 1 Q.B.D. 84.

(4) *Somerset* v. *Hart* (1883-84) 12 Q.B.D. 360.

CRIMINAL APPEAL.

Wan Ismail bin Wan Mohamed Salleh (Deputy Public Prosecutor) for the appellant.

C. O. Lim for the respondent.

Hepworth J.: The respondent was charged in the magistrate's court, Penang, with two offences as follows:—

"(1) That you on 21.8.64 at about 8.40 p.m. at the New World Park, Swatow Lane, Penang, being the licensee of the Equinox Singing Troupe did suffer Lim Boon Heng, a child under the age of 12 years to take part in a public entertainment in contravention of section 10(1) of the Children & Young Persons Ordinance No. 33/47 and have thereby committed an offence punishable under section 11 thereof.

(2) That you on 21.8.64 at about 8.40 p.m. at the New World Park, Swatow Lane, Penang, being the licensee of the Equinox Singing Troupe did suffer Lim Kim Hock, a child under 14 years old and under the age of 17 years as reckoned under the Children & Young Persons Ordinance No. 33/47 to take part in a public entertainment without a licence issued by the Commissioner for Labour as required by section 10(3) of the Children & Young Persons Ordinance No. 33/47 and have thereby committed an offence punishable under section 11 thereof."

At the conclusion of the prosecution case the learned magistrate acquitted and discharged the respondent without calling upon him for his defence. From this order the Public Prosecutor appealed.

It was argued on behalf of the respondent in the magistrate's court that the use of the word "suffer" required the prosecution to prove *mens rea*. In support of this argument learned counsel for the respondent had quoted the case of *Public Prosecutor* v. *Lim Teik Heng*.[1] It was submitted for the defence that the prosecution had failed to prove *mens rea* and the learned magistrate agreed.

The Public Prosecutor appealed on the ground that the learned magistrate had erred in law in that he applied a wrong principle when he held that the prosecution must prove actual knowledge on the part of the respondent. The prosecution had submitted that on the facts the respondent's knowledge could be implied.

It was argued by the learned Deputy Public Prosecutor on the appeal that constructive knowledge was sufficient and he quoted *Redgate* v. *Haynes*,[2] *Bosley* v. *Davies*,[3] and *Somerset* v. *Hart*.[4] He submitted that had the learned magistrate applied his mind to these authorities and the evidence he would have come to a different conclusion.

Learned counsel for the respondent argued that the authorities quoted by the learned Deputy Public Prosecutor were more in the respondent's favour than otherwise, and that there was a close analogy between the present case and *Lim Teik Heng's* case. He submitted that there must be proof of an act of "suffering" on the licensee's (the respondent's) part, and in this case there was none.

The respondent was the manager of the New World Park, Swatow Lane, Penang. He applied on the 4th August, 1964, under the Theatres and Places of Public Amusement Enactment, 1958, for a licence in respect of a troupe of performers known as the Equinox